

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

GILBERT LESTER SPURLOCK,

Plaintiff,

V.

CIVIL ACTION NO. 3:07-0750

CAROL A. CASTO, et al.,

Defendants.

**FINDINGS AND RECOMMENDATION**

In this action, removed by the United States from the Circuit Court of Cabell County under the provisions of 28 U.S.C. §1442(a)(1), plaintiff asserts a claim of “discrimination” against an assistant United States Attorney and the United States Department of Justice based on allegations that counsel for the United States is representing Mark Adkins who, like plaintiff, is “employed by the U.S. Army... .” On November 21, 2007, counsel for defendants filed a motion to dismiss, with supporting memorandum. By order entered August 4, 2008, plaintiff was advised of his right to respond to the motion and given fourteen days from the date of entry of the Court’s order to file his response. Plaintiff was further advised that failure to respond to the motion would result in the entry of a judgment denying the relief sought in the complaint and dismissing the action. Although the time provided for filing a response has passed, plaintiff has failed to respond in any manner to the motion.<sup>1</sup>

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<sup>1</sup> On August 12, 2008, plaintiff submitted a letter to the Court indicating his mistaken belief that a second motion to dismiss had been filed and that counsel for defendants had not served a copy of the motion on him. By letter dated August 13, 2008, plaintiff was advised by the Clerk that only one motion to dismiss had been filed. Sent with this letter were copies of the motion, accompanying

**RECOMMENDATION**

In light of the foregoing,<sup>2</sup> it is **RESPECTFULLY RECOMMENDED** that defendants' motion to dismiss be granted and that this action be dismissed.

Plaintiff and defendants are hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., the parties may, within thirteen days from the date of filing of these Findings and Recommendation, serve and file written objections with the Clerk of this Court identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The Judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and the parties are advised that failure to file timely objections will result in a waiver of their right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

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memorandum and the docket sheet.

<sup>2</sup> Beyond the failure to respond, it is also apparent, for the reasons set forth in the Findings and Recommendation submitted in Civil Action No. 3:07-cv-0643, that this Court lacks jurisdiction to adjudicate plaintiff's claims.

The Clerk is directed to file these Findings and Recommendation and mail a copy of the same to plaintiff and counsel of record.

DATED: September 3, 2008



MAURICE G. TAYLOR, JR.  
UNITED STATES MAGISTRATE JUDGE